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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,429	07/18/2003	David M. Koelle	G&C 30967.11-US-U1	3532
22462	7590	08/26/2004	EXAMINER	
GATES & COOPER LLP HOWARD HUGHES CENTER 6701 CENTER DRIVE WEST, SUITE 1050 LOS ANGELES, CA 90045			SALIMI, ALI REZA	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,429

Applicant(s)

KOELLE ET AL.

Examiner

A R Salimi

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1648.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6, drawn to a method of identifying active antigen, classified in class 435, subclass 7.1.
- II. Claims 7-12, 33, 35, drawn to pharmaceutical composition comprising a herpes simplex virus, and method of use, classified in class 424, subclass 231.1. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- III. Claims 13-19, 34, 36, drawn to polynucleotide that encodes an amino acid sequence, and method of use, classified in class 435, subclass 91.33. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- IV. Claims 20-23, drawn to genetically recombinant virus expressing polypeptide, classified in class 424, subclass 199.1. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- V. Claims 24-31, drawn to method of producing immune cells directed against HSV cells presenting, classified in class 435, subclass 325. **(Please note if this group**

is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)

- VI. Claim 32, drawn to method of enhancing proliferation of HSV specific T cells, classified in class 435, subclass 343.2. **(Please note if this group is selected further select one polypeptide to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- VII. Claim 37, drawn to method of treating or preventing an HSV infection, classified in class 536, subclass 23.74. **(Please note if this group is selected further select one polypeptide to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- VIII. Claim 38, drawn to method of enriching a population of T cells specific to a virus, classified in class 435536, subclass 69.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups I-VIII are mutually exclusive and patentably distinct products and methods each are structurally and functionally different products and methods which are substantially different. The products are made by different methods, and multiple methods have different uses. The examination of all groups would require different searches in the U.S. Patent Shoes, in house and commercial databases, and scientific literature and would require the consideration of different patentability issues.

Art Unit: 1648

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Upon election any one of Groups II-VII Applicants are additionally required to elect a single Sequence identified by a specific sequence identification number or a polypeptide, as indicated above as they apply to group(s). The recited sequences have different structures one from other and the search for the sequences would be unduly burdensome. This requirement is not to be construed as a requirement for an election of species, since each of the sequence(s) recited is not a member of a single genus of invention, but constitutes an independent and patentably distinct invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Art Unit: 1648


Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. R. Salimi whose telephone number is (571) 272-0909. The examiner can normally be reached on Monday-Friday from 9:00 Am to 6:00 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (571) 272-0902. The Official fax number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

A. R. Salimi

8/24/2004


ALI R. SALIMI
PRIMARY EXAMINER